

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7024

BILL NUMBER: HB 1329

NOTE PREPARED: Jan 28, 2008

BILL AMENDED: Jan 28, 2008

SUBJECT: Sex Offenses and Children.

FIRST AUTHOR: Rep. Reske

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill provides the following.

Search of Offender's Computer: This bill provides that, as a condition of probation or parole, a sex offender: (1) must consent to the search of the sex offender's computer at any time; (2) must permit installation on the sex offender's computer or device with Internet capability of hardware or software to monitor the sex offender's Internet usage; (3) may be prohibited by a probation or parole officer from using or accessing certain web sites, chat rooms, or instant messaging programs; and (4) may not delete, erase, or tamper with information on the sex offender's computer that relates to Internet usage. It specifically provides that law enforcement officials may seize computers and other equipment used to commit or facilitate sex crimes.

Internet Safety Instruction: The bill requires a school corporation to include a mandatory instructional unit on safely using the Internet for grades 3 and above.

Penalty Provisions: The bill makes it a Class A misdemeanor for a person at least 21 years of age to propose a face-to-face meeting with a child less than 14 years of age by computer network or cellular telephone text message if the communication between the parties involves a reference to sexual activity, and enhances the crime to a Class D felony for a second or subsequent offense.

It provides that a person who knowingly or intentionally: (1) photographs a person who is in a state of nudity and is in an area in which a person would reasonably be expected to disrobe; and (2) fails to destroy the image that was photographed, shows the image to another person, publishes the image, or makes the image available on the Internet, after the person who was photographed asks the person to destroy or not show the image, commits photographic voyeurism, a Class A misdemeanor.

Other Sex Offender Restrictions: The bill prohibits an offender against children from entering or loitering within 1,000 feet of school property, a youth program center, or a public park if the offender knows that children are present. It provides a defense if the offender enters the school property, youth program center, or public park to vote, or if the offender enters a school to attend a meeting with school personnel concerning the offender's child and the offender: (1) has notified the school that the person is an offender against children; and (2) is accompanied by a school employee to and from the meeting.

Effective Date: July 1, 2008.

Explanation of State Expenditures: *Change in Conditions of Parole:* The legislation adds the requirement that sex offenders consent to (1) search of computer files at any time including Internet search history and (2) restricts the offender's Internet usage and ability to alter information contained on the offender's computer as a condition of parole. Adding these provisions to current law could increase the workload of parole officers employed by the Department of Corrections (DOC) to ensure that offenders are compliant with the new regulation. Additionally, the legislation would add new grounds for terminating an offender's parole. If an offender were to violate these conditions contained in the legislation, a parole revocation hearing may be required which could increase the workload of DOC Parole Board staff.

Additionally, if a sex offender is found to have violated one of the new conditions in the legislation and a parole revocation hearing determines that an offender's parole be revoked, the offender would be re-incarcerated in DOC facilities. Any increase in expenditures to house offenders that violate conditions of their parole will depend on decisions made by the DOC Parole Board at the hearing.

Development of Internet Safety Curriculum: The bill requires the Department of Education (DOE) to develop guidelines concerning instruction of Internet safety curriculum. This provision will increase the workload of the DOE to provide guidance to school corporations regarding the particular topics the legislation addresses.

(Revised) *Penalty Provision:* The legislation defines that individuals that attempt to arrange a face-to-face meeting with a child who is believed to be under the age of 14 by using either a computer network or via text messaging commits improper communication with a minor, which is a Class D felony if the person (1) has a prior unrelated conviction, (2) is at least 21 years old, and (3) the communication has a reference to sexual activity. In addition, sex or violent offenders who are found in or near school property, public parks, or youth program centers commits child offender loitering, a Class D felony. The legislation provides exceptions as to when child offender loitering does not apply.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$19,185 in FY 2007. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$63,138. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: *Penalty Provision:* If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$17), public defense administration fee (\$3), court administration fee (\$3), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: *Change in Conditions of Probation:* Probation is a court function of counties. The legislation adds the requirement that sex offenders consent to (1) search of computer files at any time including Internet search history and (2) restricts the offender's Internet usage and ability to alter information contained on the offender's computer as a condition of parole. Adding these provisions to current law could increase the workload of probation officers employed by local courts of jurisdiction to ensure that offenders are compliant with the new regulation. Additionally, the legislation would add new grounds for revoking an offender's probation. If an offender were to violate these conditions contained in the legislation, a probation revocation hearing may be required which could increase the workload of local courts of jurisdiction.

Additionally, if a sex offender is found to have violated one of the new conditions and a probation revocation hearing decides to revoke an offender's probation, the offender would be re-incarcerated in county facilities. Any increase in expenditures to house offenders that violate conditions of their probation will depend on decisions made by courts during the hearing.

Development of Internet Safety Curriculum: School corporations are required to provide instruction to students starting in the 3rd grade regarding Internet safety. This provision will increase the workload of school staff. Actual workload increases will depend on administrative decisions made by the state Department of Education.

(Revised) *Penalty Provision:* The legislation defines that individuals that attempt to arrange a face-to-face meeting with a child who is believed to be under the age of 14 by using either a computer network or via text messaging commits improper communication with a minor, which is a Class A misdemeanor if the person is at least 21 years old and the communication has a reference to sexual activity. The legislation also states that individuals that photograph a person that does not wish to be photographed under certain conditions and in certain places commits photographic voyeurism, a Class A misdemeanor.

A Class A misdemeanor is punishable by up to one year in jail. If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association, Department of Correction.

Fiscal Analyst: Bill Brumbach, 232-9559.